



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG. 14 2015

Rafael Lantigua, Treasurer
Espaillat for Congress
210 Sherman Avenue, Suite B
New York, New York 10034

RE: MUR 6956
Espaillat for Congress and Rafael
Lantigua in his official capacity as
treasurer

Dear Mr. Lantigua:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Espaillat for Congress ("Committee") and you, in your official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On August 11, 2015, the Commission found reason to believe that the Committee and you, in your official capacity as treasurer, violated 52 U.S.C. § 30116(f), a provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,



Ann M. Ravel
Chair

Enclosures
Factual and Legal Analysis

cc: Adriano Espaillat

New York, New York 10034

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Espaillat for Congress and **MUR 6956**
Rafael Lantigua in his official capacity
as treasurer

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(2).

II. FACTS

Adriano Espaillat was a candidate in the 2014 primary election for the 13th Congressional District of New York. He lost the primary on June 24, 2014; thus, he did not participate in the general election.

The Committee's 2014 April Quarterly and 12-Day Pre-Primary Reports show that six individuals made excessive primary election contributions:

2014 PRIMARY ELECTION CONTRIBUTIONS				
CONTRIBUTOR	DATE	AMOUNT	EXCESSIVE	REFUNDED LATE
Beach, Dennie	3/13/14	\$ 250	\$590	\$590
	3/29/14	\$1,000		
	3/30/14	\$ 500		
	3/31/14	\$ 250		
	4/28/14	\$ 250		
	6/4/14	\$ 940		
Fuentes, Rodolfo	7/27/13	\$1,500	\$2,500	\$2,500
	9/9/13	\$1,000		
	3/31/14	\$2,600		
Gagliardi, Paul	12/31/13	\$2,500	\$2,500	\$2,500
	3/31/14	\$2,000		
	6/3/14	\$ 600		
Kabessa, Avik	6/30/13	\$1,500	\$5,100	\$2,500
	9/30/13	\$1,000		

	2/21/14	\$1,000		
	3/8/14	\$1,000		
	3/31/14	\$ 600		
	3/31/14	\$2,600		
Levy Nelson, Anita	3/30/14	\$2,600	\$2,600	\$2,600
	3/30/14	\$2,600		
Zaleski, Michel	6/27/13	\$2,500	\$2,500	N/A
	5/16/14	\$2,600		
TOTALS			\$15,790	\$10,690

The same reports show that the Committee accepted \$22,550 in contributions designated for the general election that were not timely refunded:

2014 GENERAL ELECTION CONTRIBUTIONS				
CONTRIBUTOR	DATE	AMOUNT	EXCESSIVE	REFUNDED LATE
Amanollahi, Sm- Ali	3/31/14	\$2,600	\$2,600	N/A
Beach, Dennie	6/4/14	\$ 350	\$ 350	\$350
Boykin Curry, Ravenel IV	2/21/14	\$2,600	\$2,600	N/A
Cardenas, Angel	6/4/14	\$ 100	\$ 100	N/A
Friedman, William S.	5/12/14	\$ 500	\$ 500	\$500
Gagliardi, Paul	6/3/14	\$2,600	\$2,600	\$600
Kemble, Cecilia	3/3/14	\$2,600	\$2,600	N/A
Morenta, Cirilo	2/3/14	\$1,400	\$1,400	\$1,400
Oleaga, Dario A.	3/14/14	\$2,400	\$2,400	N/A
Rechnitz, Jona S.	5/29/14	\$2,400	\$2,400	N/A
Spitzer, Bernard	5/13/14	\$2,600	\$2,600	N/A
Spitzer, Eliot	6/4/14	\$2,400	\$2,400	N/A
TOTALS			\$22,550	\$2,850

On June 20, 2014, RAD sent the Committee an RFAI concerning its 2014 April Quarterly Report noting, among other items, that the Committee appeared to have accepted excessive contributions. See RAD Referral at 2. In a July 25 amended April Quarterly Report, the Committee corrected certain misreported contribution entries, reducing by \$3,900 the amount of

1 excessive contributions identified by RAD. *See id.* Further amendments on July 29 and
2 December 10 did not disclose any refunds of the excessive contributions. *Id.*

3 On June 27, 2014, RAD sent the Committee an RFAI concerning its 12-Day Pre-Primary
4 Report, noting, among other items, that the Committee appeared to have accepted additional
5 excessive contributions. *See id.* at 2-3. On August 1, the Committee filed an Amended 2014
6 12-Day Pre-Primary Report that disclosed corrections reducing by \$7,150 the amount of
7 excessive contributions identified in the RFAI. *See* RAD Referral at 3. The Committee filed
8 additional amended Pre-Primary reports on July 28 and December 10, but they did not reflect
9 any refunds.

10 In a November 19, 2014, Miscellaneous Report, the Committee stated that it had
11 refunded some general election contributions, and would give priority to refunding more such
12 contributions because the candidate did not participate in that election. *See* Miscellaneous
13 Report to FEC (Nov. 19, 2014). The Committee also explained that it would be holding “debt-
14 retirement” fundraisers at the candidate’s home and other fundraising activities to make further
15 refunds. *See* Miscellaneous Report to FEC (Dec. 10, 2014). On May 28, 2015, the Committee
16 disclosed making four additional refunds. *See* Letter to CELA (May 28, 2015).

17 Meanwhile, OGC notified the Committee of the Referral on March 31, 2015. *See* Letter
18 to Rafael Lantigua, Treasurer of the Committee (Mar. 31, 2015); *see also* *Agency Procedure for*
19 *Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4,
20 2009). Other than notifying the Commission about the May 28 refunds, the Committee has not
21 responded to the notice.

1 **III. LEGAL ANALYSIS**

2 Under the Act, an individual may not make a contribution to a candidate with respect to
3 any election in excess of the legal limit, which was \$2,600 per election during the 2014 election
4 cycle.¹ A primary election and a general election are each considered a separate "election" under
5 the Act, and the contribution limits are applied separately with respect to each election.²
6 Candidates and political committees are prohibited from knowingly accepting excessive
7 contributions.³

8 The Commission's regulations permit a candidate's committee to receive contributions
9 for the general election prior to the primary election.⁴ If, however, the candidate does not
10 become a candidate in the general election, the committee must: (1) refund the contributions
11 designated for the general election; (2) redesignate such contributions in accordance with
12 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with
13 11 C.F.R. § 110.1(k)(3).⁵ The committee must do so within 60 days of the date that the

¹ See 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

² See 52 U.S.C. §§ 30101(1)(A) and 30116(a)(6); 11 C.F.R. §§ 100.2 and 110.1(j).

³ See 52 U.S.C. § 30116(f).

⁴ See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.* The committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. See 11 C.F.R. § 102.9(e)(2).

⁵ See 11 C.F.R. § 102.9(e)(3). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 ("Nonetheless, the Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible."); Advisory Op. 2007-03 (Obama for America) at 3 ("If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits.").

1 committee has actual notice of the need to redesignate, reattribute, or refund the contributions,
2 such as the date the candidate loses the primary.⁶

3 Redesignation of general election contributions may only occur to the extent that the
4 amount redesignated does not exceed the contributor's contribution limit for the primary and the
5 amounts redesignated do not exceed the net debts outstanding from the primary.⁷ Likewise,
6 reattribution of a general election contribution may only occur to the extent that such attribution
7 does not exceed the contributor's contribution limits.⁸

8 In this matter, the Committee accepted \$15,790 in excessive primary election
9 contributions that it failed to timely refund, reattribute, or redesignate. *See* 11 C.F.R. § 110.1(b)
10 and (k). The Committee also accepted contributions totaling \$22,550 that were designated for
11 the 2014 general election but were not refunded within 60 days after the candidate's June 24,
12 2014, loss in the primary. *See* 11 C.F.R. § 102.9(e)(3). The Committee could not redesignate or
13 reattribute any of these excessive contributions because the contributors had already contributed
14 \$2,600 toward the primary election, the maximum allowable contribution.

15 Based on the foregoing, the Commission found reason to believe that Espaillat for
16 Congress and Rafael Lantigua in his official capacity as treasurer violated 52 U.S.C. § 30116(f)
17 by knowingly accepting excessive contributions.

⁶ *See* Advisory Op. 1992-15 (Russo).

⁷ *See* 11 C.F.R. §§ 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i); *see also* AO 1992-15 (Russo) at 2. A committee's net debts outstanding are calculated, in relevant part, based on the total amount of debts and obligations incurred for an election, less the total cash on hand available, and any amounts owed to the committee. 11 C.F.R. § 110.1(b)(3)(ii).

⁸ *See* 11 C.F.R. § 110.1(k)(3)(ii)(B)(1); *see also* AO 2007-03 (Obama) at 3.